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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 MISTY M. COMSTOCK )  
9 )  
10 Plaintiff, ) CASE NO. C04-1635-JCC  
11 v. )  
12 ) REPORT AND  
13 JO ANNE B. BARNHART, ) RECOMMENDATION  
Commissioner of Social Security, )  
Defendant. )  
\_\_\_\_\_ )

14 Plaintiff Misty Comstock appeals to the District Court from a final decision of the  
15 Commissioner of the Social Security Administration (the “Commissioner”) denying her  
16 application for Supplemental Security Income disability benefits under Title XVI of the Social  
17 Security Act. For the reasons set forth below, it is recommended that the Commissioner’s  
18 decision be AFFIRMED.

19 I. PROCEDURAL HISTORY

20 Plaintiff applied for Supplemental Security Income (“SSI”) on July 30, 2001, alleging  
21 disability since May 10, 2001, and identifying her impairment as “BAD [bipolar affective  
22 disorder] manic with psychosis NOS, poor functioning.” Tr. 52. The Social Security  
23 Administration denied Plaintiff’s application initially (Tr. 20, 22-25) and upon reconsideration  
24 (Tr. 21, 28-30). A hearing was held before Administrative Law Judge (“ALJ”) Edward P.

1 Nichols, on August 19, 2003. Plaintiff, who was represented by counsel, testified at the  
2 hearing. Tr. 349-372. Plaintiff's mother, Janeen Manney, and a vocational expert ("VE"), Paul  
3 Prachyl, also testified at the hearing. Tr. 373-389. The ALJ issued an unfavorable decision on  
4 November 18, 2003, finding that Plaintiff is able to perform a significant number of jobs in the  
5 State and national economies despite her limitations, and thus, she was not under a disability at  
6 any time through the date of the decision. Tr. 19. On May 27, 2004, the Appeals Council  
7 denied Plaintiff's request for review, making the ALJ's decision the final decision of the  
8 Commissioner. Tr. 2-3. Plaintiff timely filed her appeal with this Court.

## 9 II. THE PARTIES' POSITIONS

10 Plaintiff requests that the Court reverse the Commissioner's decision and remand for  
11 payment of benefits. Plaintiff argues that the ALJ erred by: (1) denying disability based on  
12 Plaintiff's failure to consistently take medication for her bipolar disorder, without following the  
13 mandatory provisions of SSR 82-59; (2) ignoring the disability opinion of an examining  
14 physician, as well as the limitations identified by the nonexamining state agency physicians;  
15 (3) failing to properly evaluate Plaintiff's residual functional capacity pursuant to SSR 96-8p;  
16 (4) relying on the VE's opinion that was based on a deficient RFC assessment; (5) improperly  
17 rejecting the testimony and written statement of lay witnesses; and (6) failing to articulate "clear  
18 and convincing" reasons for rejecting Plaintiff's testimony. Defendant responds that the  
19 Commissioner's decision should be affirmed because it is supported by substantial evidence and  
20 is free of legal error.

## 21 III. STANDARD OF REVIEW

22 The court may set aside the Commissioner's denial of social security disability benefits  
23 when the ALJ's findings are based on legal error or not supported by substantial evidence in the  
24 record as a whole. *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence is

1 defined as more than a mere scintilla but less than a preponderance; it is such relevant evidence  
2 as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*,  
3 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving  
4 conflicts in medical testimony, and for resolving ambiguities. *Andrews v. Shalala*, 53 F.3d  
5 1035, 1039 (9th Cir. 1995). Where the evidence is susceptible to more than one rational  
6 interpretation, it is the Commissioner's conclusion which must be upheld. *Sample v. Schweiker*,  
7 694 F.2d 639, 642 (9th Cir. 1982).

#### 8 IV. EVALUATING DISABILITY

9 The claimant bears the burden of proving that he is disabled. *Meanel v. Apfel*, 172 F.3d  
10 1111, 1113 (9th Cir. 1999). Disability is defined as the inability to engage in any substantial  
11 gainful activity by reason of any medically determinable physical or mental impairment, which  
12 can be expected to result in death, or which has lasted or can be expected to last for a  
13 continuous period of not less than twelve months. 42 U.S.C. § 423 (d)(1)(A).

14 The Social Security regulations set out a five-step sequential evaluation process for  
15 determining whether claimant is disabled within the meaning of the Social Security Act. *See* 20  
16 C.F.R. § 416.920. At step one, the claimant must establish that he or she is not engaging in any  
17 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). At step two, the claimant  
18 must establish that he or she has one or more medically severe impairments or combination of  
19 impairments. If the claimant does not have a "severe" impairment, he or she is not disabled. *Id.*  
20 at § (c). At step three, the Commissioner will determine whether the claimant's impairment  
21 meets or equals any of the listed impairments described in the regulations. A claimant who  
22 meets one of the listings is disabled. *See Id.* at § (d).

23 At step four, if the claimant's impairment neither meets nor equals one of the  
24 impairments listed in the regulations, the Commissioner evaluates the claimant's residual

1 functional capacity and the physical and mental demands of the claimant's past relevant work.  
2 *Id.* at § (e). If the claimant is not able to perform his or her past relevant work, the burden  
3 shifts to the Commissioner at step five to show that the claimant can perform some other work  
4 that exists in significant numbers in the national economy, taking into consideration the  
5 claimant's residual functional capacity, age, education, and work experience. *Id.* at § (f);  
6 *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999). If the Commissioner finds the claimant  
7 is unable to perform other work, then the claimant is found disabled.

#### 8 V. SUMMARY OF THE RECORD EVIDENCE

9 Plaintiff, who was born in September, 1979, was 23 years old at the time of the hearing  
10 before the ALJ. Tr. 349. She has an eighth grade education (Tr. 349) and she previously  
11 worked as a file maker/organizer, engraver, and house cleaner (Tr. 60, 352-54). In her  
12 disability report, Plaintiff indicated that her condition limits her ability to work because she is  
13 unable to focus and concentrate, unable to relate to others; unable to interact with others;  
14 unable to maintain appropriate behavior, and she always worries about how she presents herself.  
15 Tr. 59. Plaintiff has been diagnosed with a bipolar disorder, which has led to two incidents of  
16 psychotic behavior that required hospitalization: the first time, when trying to jump from a  
17 moving car and then running naked down a bike trail (Tr. 141), and the second time, a year  
18 later, after being found running down a street naked, praying, and chanting (Tr. 229). Other  
19 evidence relevant to Plaintiff's claims is incorporated into the discussion below.

#### 20 VI. THE ALJ'S DECISION

21 The ALJ found that Plaintiff had not engaged in substantial gainful activity since her  
22 alleged disability onset date. Tr. 18. The ALJ found that Plaintiff has severe impairments  
23 consisting of a bipolar disorder and substance abuse disorder, but he determined that these  
24 impairments do not meet or equal the criteria of any listing. Tr. 16, 18. The ALJ found that

1 Plaintiff has the residual functional capacity to perform the exertional requirements of all work.  
2 However, due to her bipolar disorder and substance abuse problems, he also found that Plaintiff  
3 is limited to simple, repetitive, low concentration type work with no complex instructions; she  
4 should working around crowds or the public; and she initially requires close supervision. Tr.  
5 18. The ALJ, therefore concluded that Plaintiff is unable to perform her past relevant work. *Id.*  
6 In reaching this conclusion, the ALJ found that the testimony of Plaintiff and her witness were  
7 not credible to the extent that it may be interpreted that Plaintiff has functional limitations so  
8 severe as to preclude all work activity. *Id.* At step five, the ALJ found that there are a  
9 significant number of jobs in the State and national economies that Plaintiff can perform,  
10 including inspector/packager and packager. Tr. 19. Accordingly, the ALJ concluded that  
11 Plaintiff was not disabled at any time through the date through the date of the decision. Tr. 19.

## 12 VII. DISCUSSION

### 13 A. PHYSICIANS' OPINIONS

14 Plaintiff argues that the ALJ erred by ignoring, without comment, the disability opinion  
15 of an examining physician, as well as limitations identified by nonexamining state agency  
16 physicians.

#### 17 (1) Examining Physician's Opinion

18 The Commissioner must provide "clear and convincing reasons" for rejecting the  
19 uncontradicted opinion of an examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
20 1996) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1999)). The opinion of an  
21 examining doctor, even if contradicted by another doctor, can only be rejected for specific and  
22 legitimate reasons that are supported by substantial evidence in the record. *Lester*, 81 F.3d at  
23 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)).

1 In the present case, although Plaintiff notes that the ALJ acknowledged the finding by  
 2 the Commissioner's psychiatric consultative examiner, Dr. David Sandvik, that she has a GAF  
 3 of 45,<sup>1</sup> Plaintiff argues that "the ALJ totally ignored the assigned GAF which equates to a  
 4 finding of disability." However, the record does not support this claim.

5 In his assessment and explanation of Plaintiff's GAF, Dr. Sandvik states the following:

6 Global Assessment of Function relevant to psychiatry: code 45, *serious*  
 7 *symptoms*, with some impairment in reality testing and communication. Her  
 8 speech is latent in response; her mood is incongruent with her perception and  
 representation of it. She has impairment in several areas including judgment,  
 mood, and is confused at times in her thought processes.

9 Tr. 190 (emphasis added). In summarizing Dr. Sandvik's opinion, the ALJ stated, "Global  
 10 Assessment of Functioning Scale Score was estimated to be 45, which is consistent with *severe*  
 11 *symptoms*." Tr. 14 (emphasis added). Here, the ALJ's use of the term "severe" in regard to  
 12 this GAF, suggests that not only did the ALJ accept Dr. Sandvik's assessment of Plaintiff's  
 13 GAF but also that the ALJ associated the GAF of 45 with a slightly greater degree of  
 14 seriousness in symptoms. Accordingly, I conclude that the ALJ did not ignore Dr. Sandvik's  
 15 GAF assessment, and therefore he did not err.

#### 16 (2) Nonexamining State Agency Physician's Opinion

17 Social Security Ruling 96-6p provides that an ALJ cannot ignore the opinions of State  
 18 agency physicians, and must explain the weight given to these opinions in their decisions. The  
 19 opinions of State agency consultants can be given weight only insofar as they are supported by  
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21 <sup>1</sup>Clinicians use a Global Assessment of Functioning ("GAF") scale to measure a claimant's  
 22 psychological, social, and occupational functioning. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169  
 23 F.3d 595, 598 (9th Cir. 1999). A GAF score of 41-50 is defined as "serious symptoms (e.g.,  
 suicidal ideation, *severe* obsessional rituals, frequent shoplifting) OR any serious impairment in  
 24 social, occupational, or school functioning (e.g., no friends, unable to keep a job). American  
 Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, at 34 (4th ed.  
 2000).

1 evidence in the case record, including any evidence received at the ALJ level that was not before  
2 the State agency. SSR 96-6p

3 Plaintiff argues that the ALJ ignored and thereby effectively rejected limitations  
4 identified by nonexamining State agency physicians. As the basis for this claim, Plaintiff refers  
5 to the Psychiatric Review Technique (“PRT”) (Tr. 207-220) and the Mental Residual Functional  
6 Capacity Assessment (“Mental RFC”) (Tr. 221-24) forms from J. Nelson, Ph.D., and Alex  
7 Fisher, Ph.D., who reviewed Plaintiff’s file for Disability Determination Services on December  
8 4, 2001, and March 22, 2002, respectively. Tr. 221-224. Plaintiff notes that these  
9 nonexamining physicians opined that she is “moderately limited” in: (1) ability to perform  
10 activities within a schedule, maintain regular attendance and be punctual within customary  
11 tolerances (Tr. 221); and (2) ability to get along with coworkers or peers without distracting  
12 them or exhibiting behavioral extremes (Tr. 222). They also found that difficulties in  
13 maintaining social functioning and difficulties in maintaining concentration, persistence, or pace  
14 exist at a “moderate” degree of limitation as a result of Plaintiff’s mental disorders. (Tr. 217).  
15 Plaintiff argues that by ignoring these multiple mental limitations identified by the nonexamining  
16 State agency physicians, the ALJ clearly violated SSR 96-6p and SSR 96-8p and the  
17 corresponding regulations.

18 Careful review of the record reveals that while the ALJ did not separately discuss each  
19 of the specific limitations in Plaintiff’s mental functioning listed above, the ALJ’s decision does,  
20 in fact, include a summary of the opinions by Dr. Nelson and Dr. Fisher that are set out in their  
21 notes and explanations at the end of PRT and Mental RFC forms. Tr. 14. Specifically, the ALJ  
22 notes,

23 They were of the opinion the claimant has a severe bipolar disorder, but had  
24 significantly stabilized since her May 2001 hospitalization. They noted that her  
25 variable mood might interfere at times with prolonged concentration and optimal  
schedule compliance. Further, her social anxiety might dampen her ability to

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1 relate to other individuals to some degree, but the claimant appears generally  
2 capable of cooperating on work assignments. (Internal citations omitted).

3 Tr. 14. Moreover, the ALJ's assessment of Plaintiff's residual functional capacity further  
4 demonstrates that he did not ignore or reject these opinions regarding the limitations on  
5 Plaintiff's concentration, schedule compliance, and ability to relate to others because the ALJ  
6 found that due to her bipolar disorder and substance abuse problems, "[Plaintiff] is limited to  
7 simple, repetitive, *low concentration* type work, with no complex instructions. She should  
8 *avoid working around crowds or the public* and initially *requires close supervision*. Tr. 18  
9 (emphasis added). Thus, I conclude that the ALJ did not err because he did not ignore these  
10 assessments of Plaintiff's limitations by Dr. Nelson and Dr. Fisher.

11 B. Plaintiff's Credibility

12 Plaintiff argues that the ALJ erred in assessing her credibility. If a claimant has  
13 established an underlying impairment which reasonably could be expected to produce the  
14 alleged subjective complaints and there is no evidence of malingering, the ALJ must provide  
15 clear and convincing reasons for rejecting the claimant's testimony. *See Smolen v. Chater*, 80  
16 F.3d 1273, 1281 (9th Cir. 1996). General findings are insufficient; rather, the ALJ must identify  
17 what testimony is not credible and what evidence undermines the claimant's complaints.  
18 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993); *Varney v. Sec'y of Health and Human*  
19 *Servs.*, 846 F.2d 581, 584 (9th Cir. 1988) (Varney I).

20 The ALJ must identify what testimony he finds not credible and what evidence  
21 undermines the claimant's complaints. *Dodrill v. Shalala*, 12 F.3d 915, 918 (1993). In  
22 assessing credibility, the ALJ may consider, for example: 1) ordinary techniques of credibility  
23 evaluations, such as the claimant's reputation for lying and prior inconsistent statements  
24 concerning the symptoms; 2) unexplained or inadequately explained failure to seek treatment or  
25 to follow a prescribed course of treatment; 3) the claimant's daily activities; and 4) medical

1 evidence tending to discount the severity of subjective claims. *Rollins v. Massanari*, 261 F.3d  
2 853, 856-57 (9th Cir. 2001).

3 At the hearing, Plaintiff testified that she is unable to work because “it always seems like  
4 I’m receiving messages . . . like God or Satan is talking to me and telling me things through  
5 other people.” Tr. 356. She also indicated that she is scared all the time and feels like she is in  
6 hell all the time. Tr. 352. Plaintiff described her two hospitalizations as occurring in 2002,  
7 when she “thought that witchcraft was real” and she was “doing things to try to break a curse”  
8 that was put on her (Tr. 357-58), and in May, 2001, when she was trying to do “Hail Mary’s”  
9 because she “thought she had died and was in hell or a middle world, and she needed to pray  
10 herself back, to go to heaven” (Tr. 359). Plaintiff testified that she is uncomfortable interacting  
11 with other people if they get negative and that she is “real watchful” around a lot of people. Tr.  
12 360. She indicated that a lot of the time she has difficulty concentrating and understanding  
13 things. Tr. 361.

14 Plaintiff stated that she gains weight when she takes her medication. Tr. 362. She also  
15 indicated that the medication mostly makes her tired and makes her “not get up and act out,”  
16 but it does not take away the messages. Tr. 363. Plaintiff testified that she gets the shakes in  
17 her hands as a side-effect of the medicine. Tr. 366. She stated that she’s “good about taking it  
18 [her medication], it’s such a habit now.” Tr. 366. Plaintiff testified that she does not run  
19 errands (e.g., going to the grocery store, bank, etc.) and that her Mom needs to drives her  
20 around because “if there was ever any kind of a problem, I would need her to be right there to  
21 help take over and talk for me.” Tr. 367. Plaintiff stated that she likes to escape by  
22 rollerblading with music blaring in her ears, and she likes to play pool. Tr. 368. She also hangs  
23 out and smokes pot with her friends a few times a week. (Tr. 369). She helps her mom clean  
24 the house and she has her own apartment downstairs in her parents house that she has to keep  
25

1 clean and do laundry. Tr. 371.

2 In evaluating Plaintiff's testimony, the ALJ concluded that Plaintiff was not fully credible  
3 in allegations that she is totally disabled and unable to work due to bipolar disorder. Tr. 16, 18.  
4 However, Plaintiff argues that the ALJ failed to provide clear and convincing reasons for  
5 rejecting her testimony. This Court disagrees.

6 The ALJ articulated a number of clear and convincing reasons, which are supported by  
7 the record, for finding Plaintiff not fully credible. The ALJ identified the following reasons for  
8 his conclusion: 1) the objective evidence is not consistent with Plaintiff's allegations, 2) she has  
9 received minimal treatment over the last three years, 3) her impairment is generally controlled  
10 with the use of medication, 4) she retains the ability to perform many activities of daily living  
11 with minimal difficulty and 5) her work history suggests she is not highly motivated to work.  
12 Tr. 16.

13 More specifically, the ALJ noted that at age 24, Plaintiff's earning records show  
14 relatively poor earnings levels, considering that she had not been in school since eighth grade.  
15 Tr. 15. Review of the records reflects that earnings by Plaintiff in 1998 and 1999 in the  
16 amounts of \$8,806.76 and \$2,095.89, respectively. Tr. 57. He further noted that Plaintiff's  
17 poor work history and her statement to physicians that \$339.00 in GAU benefits are "enough"  
18 to get by, indicate that she is not highly motivated to work. Tr. 15, 285. Additionally, the ALJ  
19 noted that in both instances in which Plaintiff was hospitalized due to psychotic behavior, she  
20 was quickly stabilized with the introduction of medications. *See e.g.*, Tr. 143, 262. He further  
21 pointed out that after Plaintiff's second hospitalization, she stated that she was aware that her  
22 decompensation had been caused by her failure to take her medications and that she would need  
23 to be consistent with her medications in the future. Tr. 15, 267. The ALJ noted that Plaintiff  
24 has not had any significant mood de-stabilizations since her second hospitalization. Tr. 15. He

1 concluded that the Plaintiff's bipolar disorder is well-controlled with the use of medication and  
2 her symptoms are relatively mild. *Id.*

3 The ALJ noted that there was no evidence that Plaintiff reported the symptoms she  
4 identified in her testimony regarding experiencing suicidal thoughts and hearing the voice of  
5 God and Satan on a regular basis to her treating physicians. Tr. 15-16. The ALJ also  
6 highlighted the fact that during medical appointments in November and December 2002, the  
7 claimant stated that her medications, home life, symptoms, and social life were all good; and she  
8 was going out often, rollerblading, gardening, socializing, and even doing some karaoke. Tr.  
9 16, 320, 322, 328.

10 Finally, the ALJ noted that although Plaintiff appeared somewhat slow in her  
11 presentation at the hearing, which is consistent with side effects caused by her medication,  
12 Disability Determination Services assessed that Plaintiff has moderate functional limitations, she  
13 engages in recreational activities, has friends with whom she socializes, and sees a regular  
14 boyfriend. The ALJ found these facts to be inconsistent with her reports of debilitating social  
15 anxiety, fear and distrust. He also indicated that Plaintiff's admitted use of marijuana a few  
16 times a week, that she enjoys hanging out with her friends and going into "total chill mode," and  
17 her testimony and demeanor during the hearing were "more consistent with an individual who  
18 has chosen not to work because she has little discipline and little need to do so." Tr. 16.

19 In light of these facts, I conclude that the ALJ identified clear and convincing reasons  
20 based on Plaintiff's daily activities and medical evidence tending to discount the severity of her  
21 symptoms. Accordingly, I find that the ALJ did not err in finding Plaintiff's testimony not  
22 entirely credible.

1 C. Lay Witness Testimony and Written Statements

2 Plaintiff argues that the ALJ improperly rejected her mother's testimony and totally  
3 ignored the written statement submitted by her stepfather, which also describes her symptoms  
4 and limitations. An ALJ must consider a lay witness' observations of how the claimant's  
5 impairment affects his ability to work. 20 C.F.R. § 404.1513(e)(2); *Smolen v. Chater*, 80 F.3d  
6 1273, 1288 (9th Cir. 1996). An ALJ may reject such testimony only if "reasons germane to  
7 each witness" are given. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

8 Here, the ALJ acknowledged that Plaintiff's mother, Janeen Manney, testified and that  
9 her testimony was similar to and bolstered that of Plaintiff. Tr. 15. He specifically noted her  
10 testimony that Plaintiff has difficulty understanding instructions, will not take medications if not  
11 told to do so, is suspicious and scared of people, has bad taste in boyfriends, and basically  
12 stopped developing emotionally at age 14. *Id.* The ALJ's decision discusses his assessment of  
13 Mrs. Manny credibility along with that of Plaintiff, articulating the reasons set out in subsection  
14 "B" above for finding her testimony not fully credible. Given that Mrs. Manny's testimony was  
15 consistent with Plaintiff's in support of the allegation that Plaintiff is totally disabled and unable  
16 to work, I conclude that the reasons articulated by the ALJ are likewise "germane" to this lay  
17 witness and the ALJ did not err in assessing her credibility.

18 Plaintiff's stepfather, Dick Manney, submitted responses to a Daily Activities  
19 Questionnaire about Plaintiff. Tr. 91- 94. The ALJ's decision does not mention Mr. Manney's  
20 statement. However, the Commissioner need not discuss *all* evidence presented to her. *See*  
21 *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). Rather, she must explain why  
22 "significant probative evidence has been rejected." *Id.* (quoting *Cotter v. Harris*, 642 F.2d 700,  
23 706 (3d Cir. 1981)). The content of Mr. Manney's written statement is generally consistent  
24 with his wife's testimony regarding Plaintiff's difficulty following instructions and her need to be

1 reminded to take medication in the morning, and it is also consistent with Plaintiff's testimony  
2 regarding her daily activities. Because Mr. Manney's written statement provided no evidence  
3 that was not already before the ALJ, it is not significantly probative. Moreover, his statement  
4 included no observations of how Plaintiff's impairments affect her ability to work. Therefore, I  
5 find that the ALJ did not err by not commenting on Mr. Manney's written statement.

6 D. RFC Assessment

7 Plaintiff argues that the ALJ failed to properly evaluate her residual functional capacity  
8 pursuant to SSR 96-8p. A claimant's RFC is based on what she can still do despite her  
9 limitations. *See* 20 C.F.R. § 416.945(a) (2001). At the hearing level, the ALJ evaluates a  
10 claimant's RFC at step four of the sequential evaluation process by considering all of the  
11 evidence, including any physical and mental limitations. *See* 20 C.F.R. § 416.945(a)(b)(c),  
12 416.946, and SSR 96-8p. SSR 96-8p provides that "[t]he RFC assessment considers only  
13 functional limitations and restrictions that result from an individual's medically determinable  
14 impairment or combination of impairments, including the impact of any related symptoms." The  
15 ALJ is free to accept or reject restrictions that the claimant alleges provided his findings are  
16 supported by substantial evidence. *Magallanes*, 881 F.2d at 756-57.

17 The Social Security Regulations require that the ALJ undertake a "function-by-function"  
18 analysis of the claimant's capacity to work according to exertional categories.

19 The RFC assessment must first identify the individual's functional limitations or  
20 restrictions and assess his or her work-related abilities on a function-by-function  
21 basis, including the functions in paragraphs (b), (c) and (d) of 20 C.F.R.  
404.1545 and 416.945. Only after that may RFC be expressed in terms of the  
exertional levels of work, sedentary, light, medium, heavy, and very heavy.

22 SSR 96-8p.  
23  
24  
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1 Here, the ALJ found that the record is consistent with Plaintiff having the following  
2 residual functional capacity:

3 The claimant does not have any physical or mental impairment and retains the  
4 ability to perform the exertional requirements of all work activity. Due to her  
5 bipolar disorder and substance abuse disorder, the claimant is limited to simple,  
6 repetitive, low concentration type work, with no complex instructions. She  
7 should avoid working around crowds or the public and should initially receive  
8 close supervision.

9 Tr. 17, 18. Plaintiff argues that the ALJ failed to assess whether she is capable of working on a  
10 “regular and continuing basis,” even though she suffers from fatigue from medication, delusions,  
11 moderate difficulties in concentration, persistence, or pace, and moderate limitations in the  
12 ability to perform activities within a schedule and maintain regular attendance as found by the  
13 nonexamining State agency physicians. She also argues that the ALJ failed to consider her  
14 reaction to stress when formulating the RFC. Plaintiff contends the ALJ found that she had an  
15 RFC for certain work without conducting a function-by-function analysis with a “narrative  
16 discussion describing how the evidence supports each conclusion.” Further, Plaintiff argues that  
17 the ALJ failed to consider the side effects from her medication, including slowness and shakes in  
18 her hands, which could clearly affect her persistence and pace.

19 However, as noted in subsection “A(2)” above, the ALJ acknowledged and apparently  
20 accepted the functional limitations identified in the mental RFC assessment completed by the  
21 nonexamining State agency physicians. Tr. 217. Because he had the benefit of the function-by-  
22 function assessment set out in their evaluation, there was no need for the ALJ to duplicate their  
23 effort. Furthermore, in evaluating Plaintiff’s subjective complaints and symptoms, the ALJ  
24 acknowledged that during the hearing, Plaintiff was pleasant, but somewhat “slow” in her  
25 presentation. The ALJ concluded that this is consistent with the side effects that are often  
26 caused by Plaintiff’s medications and he noted that the consultative examination did note some  
effect of the claimant’s medications on her functional abilities. Tr. 16, Additionally he

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1 indicated that Disability Determination Services assessed Plaintiff's functional limitations as only  
2 moderate in nature. *Id.* The ALJ also concluded that the fact that Plaintiff engages in  
3 recreational activities, has friends with whom she socializes, and sees a regular boyfriend is  
4 inconsistent with her reports of debilitating social anxiety, fear and distrust. Tr. 16.

5 These facts demonstrate that the ALJ considered the appropriate, credible evidence  
6 required for an RFC assessment. Therefore, I conclude that the ALJ did not err in his RFC  
7 determination.

8 E. ALJ's Reliance on VE's Testimony

9 Plaintiff argues that the ALJ's reliance on the VE's testimony is flawed because the  
10 hypothetical presented to the VE was based upon a deficient RFC assessment and therefore, did  
11 not contain all of Plaintiff's limitations. As noted in subsection "D" above, the ALJ properly  
12 evaluated Plaintiff's residual functional capacity. Therefore, I conclude that because the ALJ's  
13 hypothetical to the VE was based on a proper RFC assessment, the ALJ did not err in relying on  
14 the VE's testimony that Plaintiff could perform a significant number of jobs existing in the State  
15 and national economies, including the jobs of inspector/packager and packager. Tr. 19, 384-85.

16 F. Alleged Denial of Disability Based on Plaintiff's Failure to Take Medication

17 Plaintiff argues that the ALJ erred by denying Plaintiff's disability application based upon  
18 her failure to consistently take medication for bipolar disorder, without complying with the  
19 mandatory requirements of SSR 82-59. However, there is nothing in the ALJ's decision  
20 indicating that Plaintiff's disability claim was denied on this basis. In fact, in the context of his  
21 conclusion that the objective medical evidence as a whole was not consistent with Plaintiff's  
22 allegations of a disabling mental impairment, the ALJ's reference to Plaintiff's medication  
23 consisted of noting that Plaintiff's condition stabilized when she is on medication; that her  
24 second hospitalization occurred after she stopped taking her medications for two months;

1 claimant's stated awareness that her decompensation had been caused by her failure to take her  
2 medications and that she would need to consistently take her medications in the future; and that  
3 claimant had not had any significant mood destabilizations since her second hospitalization. Tr.  
4 15. Accordingly, I conclude that Plaintiff's claim that the ALJ denied her disability application  
5 based on her failure to consistently take her medication is without merit.

6 VIII. CONCLUSION

7 The Commissioner's determination to deny Plaintiff SSI benefits is supported by  
8 substantial evidence and is free of legal error. Based on the record evidence, the undersigned  
9 recommends that the Commissioner's decision be AFFIRMED. A proposed Order accompanies  
10 this Report and Recommendation.

11 DATED this 16th day of September, 2005.

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14 MONICA J. BENTON  
15 United States Magistrate Judge  
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